

Sentencing trends in
the higher courts of
Victoria
2013–14 to 2017–18

May 2019
No. 230

Rape

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of rape in the County and Supreme Courts of Victoria from 2013–14 to 2017–18.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2018 have been incorporated into the data in this Snapshot.³

Detailed data on rape and other offences is available on [Sentencing Advisory Council Statistics Online \(SACStat\)](#).

A person who intentionally sexually penetrates another person without that person's consent is guilty of the offence of rape. Sexual penetration includes oral, anal and vaginal penetration and may be committed by and against both men and women. However, rape is overwhelmingly committed by men against women.

Rape is an indictable offence that carries a maximum penalty of 25 years' imprisonment⁴ and/or a fine of 3,000 penalty units.⁵ Rape is a Category 1 offence, which means that a court must impose a custodial sentence for that offence.⁶ Rape offences committed on or after 1 February 2018 are subject to a standard sentence of 10 years.⁷

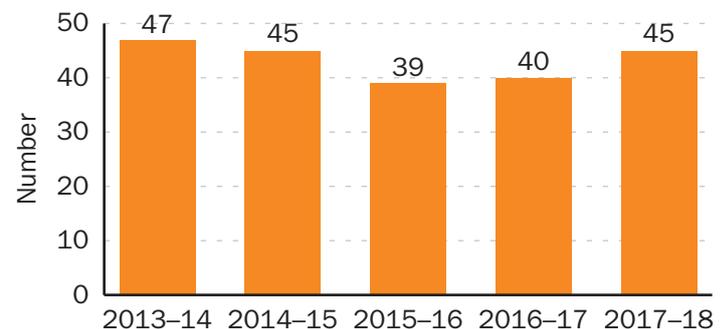
Rape was the principal offence⁸ in 2.4% of cases sentenced in the higher courts between 2013–14 and 2017–18.

People sentenced

From 2013–14 to 2017–18, 216 people were sentenced in the higher courts for a principal offence of rape.

Figure 1 shows the number of people sentenced for the principal offence of rape by financial year. There were 45 people sentenced for this offence in 2017–18, up by 5 people from the previous year. The number of people sentenced was highest in 2013–14 (47 people) and lowest in 2015–16 (39 people).

Figure 1: The number of people sentenced for rape, by financial year, 2013–14 to 2017–18

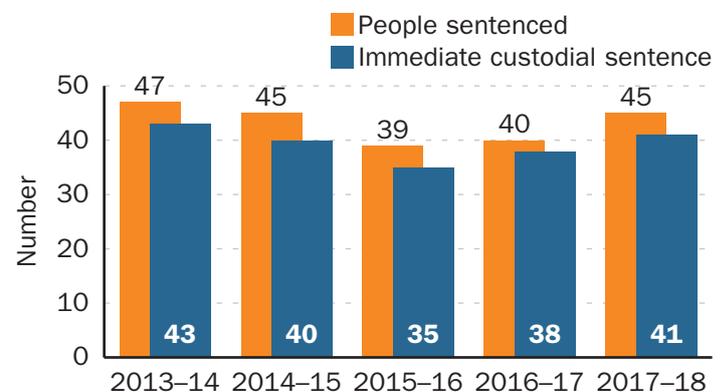


Sentence types and trends

Figure 2 shows the total number of people sentenced for rape and the number receiving an immediate custodial sentence. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁹ Over the five-year period, 91% of people were given an immediate custodial sentence.

Table 1 (page 2) shows the number of people sentenced for rape by the types of sentences imposed. The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.¹⁰ Changes to community correction orders have also influenced the sentencing trends over the five years covered by this Snapshot.¹¹

Figure 2: The number of people sentenced for rape and the number receiving an immediate custodial sentence, 2013–14 to 2017–18



Over the five-year period, the majority of people sentenced for rape received a principal sentence of imprisonment (89% or 193 of 216 people). Of these, 184 people received a sentence of imprisonment alone, 8 people received imprisonment combined with a community correction order and 1 person received an aggregate sentence of imprisonment combined with a community correction order. The *principal sentence* is the sentence imposed for the charge that is the principal offence.¹²

The percentage of people receiving any form of imprisonment for the principal offence of rape remained relatively steady at 89 to 90% over the five years. Some people received sentences of imprisonment combined with a community correction order, particularly in 2014–15 (6 people or 13% of sentences overall), but very few people received this form of imprisonment in any other year. In comparison, the use of community correction orders (without imprisonment) slightly increased over the same period, from 2% in 2013–14 to 4% in 2017–18, after peaking at 10% in 2015–16.

Table 1: The number and percentage of people sentenced for rape, by sentence type, 2013–14 to 2017–18

Sentence type	2013–14	2014–15	2015–16	2016–17	2017–18	Total
Imprisonment	42 (89%)	34 (76%)	34 (87%)	34 (85%)	40 (89%)	184 (85%)
Community correction order	1 (2%)	3 (7%)	4 (10%)	1 (3%)	2 (4%)	11 (5%)
Imprisonment and community correction order (combined)	0 (–)	6 (13%)	1 (3%)	1 (3%)	0 (–)	8 (4%)
Wholly suspended sentence	2 (4%)	2 (4%)	0 (–)	0 (–)	0 (–)	4 (2%)
Non-custodial supervision order	0 (–)	0 (–)	0 (–)	1 (3%)	2 (4%)	3 (1%)
Residential treatment order	1 (2%)	0 (–)	0 (–)	1 (3%)	0 (–)	2 (<1%)
Aggregate imprisonment and community correction order (combined)	0 (–)	0 (–)	0 (–)	1 (3%)	0 (–)	1 (<1%)
Partially suspended sentence	0 (–)	0 (–)	0 (–)	1 (3%)	0 (–)	1 (<1%)
Unconditional release	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
Youth justice centre order	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)	1 (<1%)
People sentenced	47	45	39	40	45	216

Principal and total effective sentences

In this section, two methods are used to describe sentence lengths. One method relates to the principal sentence and describes sentences for the offence at a *charge* level. The other relates to the total effective sentence and describes sentences for the offence at a *case* level (the principal sentence is described above).

The total effective sentence in a case with a single charge is the principal sentence. The total effective sentence in a case with multiple charges is the sentence that results from the court ordering the individual sentences for each charge to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other).

Where a case involves multiple charges, the total effective sentence imposed on a person is sometimes longer than the principal sentence. Principal sentences for rape must be considered in this broader context.

The following sections analyse the use of imprisonment for the offence of rape from 2013–14 to 2017–18.

Principal sentence of imprisonment

A total of 193 people received a principal sentence of imprisonment for rape. Of these, 192 people received a non-aggregate term of imprisonment and 1 person received an aggregate term. There were 9 people who received a community correction order in addition to their term of imprisonment.

Figure 3 shows the length of imprisonment for the people who received a non-aggregate term.¹³ Imprisonment terms ranged from 3 months (combined with a community correction order) to 12 years, while the median length of imprisonment was 5 years (meaning that half of the imprisonment terms were below 5 years and half were above).

The most common length of imprisonment was 4 to less than 5 years (42 people).

As shown in Figure 4, the average (mean) length of imprisonment imposed on people sentenced for rape ranged from 4 years and 11 months in 2016–17 to 6 years and 8 months in 2017–18. The average length of imprisonment for rape grew considerably in 2017–18, representing a 31% increase on the combined average of the four prior years: from 5 years and 1 month (2013–14 to 2016–17) to 6 years and 8 months (2017–18). The number of people sentenced for rape also remained relatively consistent over the five-year period, averaging approximately 38 people per year.

Other offences finalised at the same hearing

Sometimes people prosecuted for rape face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of rape. The section includes data on all people sentenced for a principal offence of rape, not just those who received imprisonment.

Figure 5 shows the number of people sentenced for the principal offence of rape by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 35, while the median was 3 offences. There were 58 people (26.9%) sentenced for the single offence of rape. The average number of offences per person was 4.63.

Table 2 (page 4) shows the 10 most common offences, by number and percentage, for people sentenced for rape. The last column sets out the average number of offences sentenced per person. For example, 38 of the total 216 people (17.6%) also received sentences for indecent assault. On average, they were sentenced for 2.84 counts of indecent assault.

Figure 3: The number of people sentenced to imprisonment for rape, by length of imprisonment term, 2013–14 to 2017–18

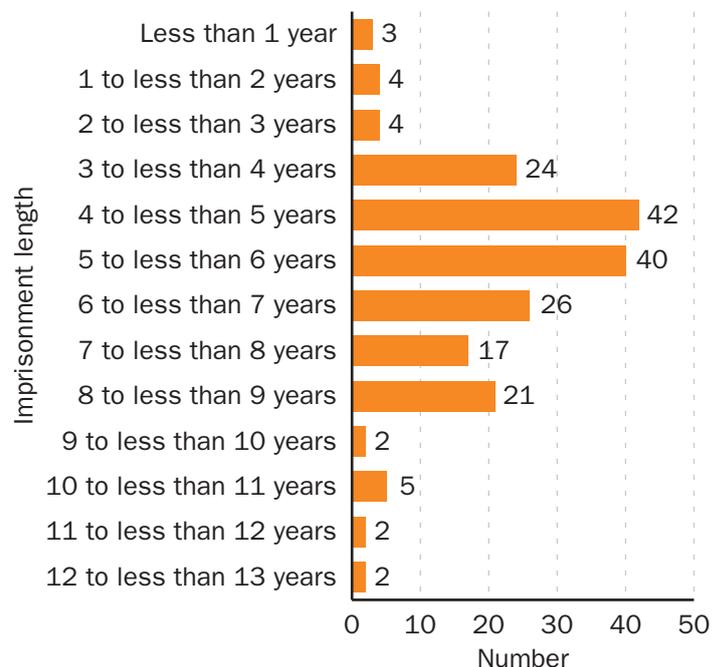


Figure 4: The average (mean) length of imprisonment imposed on people sentenced for rape, 2013–14 to 2017–18

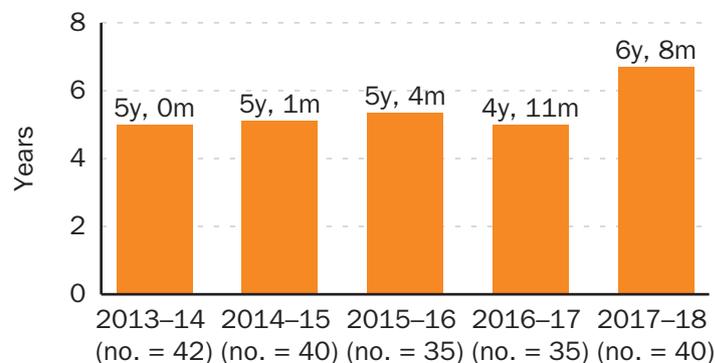


Figure 5: The number of people sentenced for the principal offence of rape, by the number of sentenced offences per person, 2013–14 to 2017–18

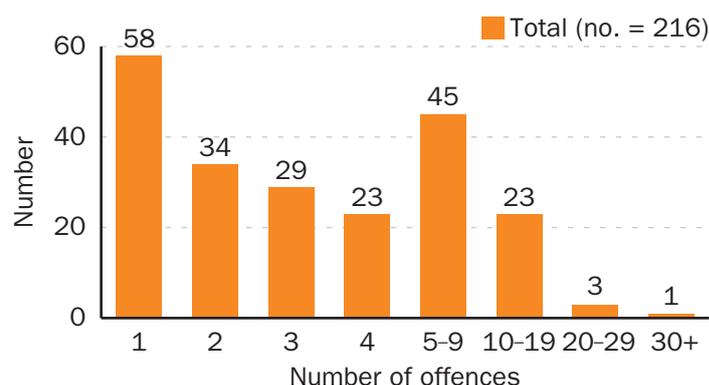


Table 2: The number and percentage of people sentenced for the principal offence of rape, by the most common offences that were sentenced and the average number of those offences that were sentenced, 2013–14 to 2017–18

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Rape	216	100	2.12
2. Indecent assault (<i>Crimes Act 1958</i> (Vic) s 39 (repealed))	38	17.6	2.84
3. Common Law assault	30	13.9	2.50
4. Causing injury intentionally	21	9.7	1.52
5. Making threat to kill	19	8.8	1.21
6. Theft	16	7.4	1.31
7. False imprisonment	16	7.4	1.19
8. Aggravated burglary	16	7.4	1.13
9. Causing injury recklessly	12	5.6	1.33
10. Sexual assault	11	5.1	1.45
People sentenced	216	100	4.63

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for rape by length of total effective imprisonment term. The total effective imprisonment terms ranged from 3 months (combined with a community correction order) to 24 years and 1 month, while the median total effective imprisonment term was 6 years and 6 months (meaning that half of the total effective imprisonment terms were below 6 years and 6 months and half were above).

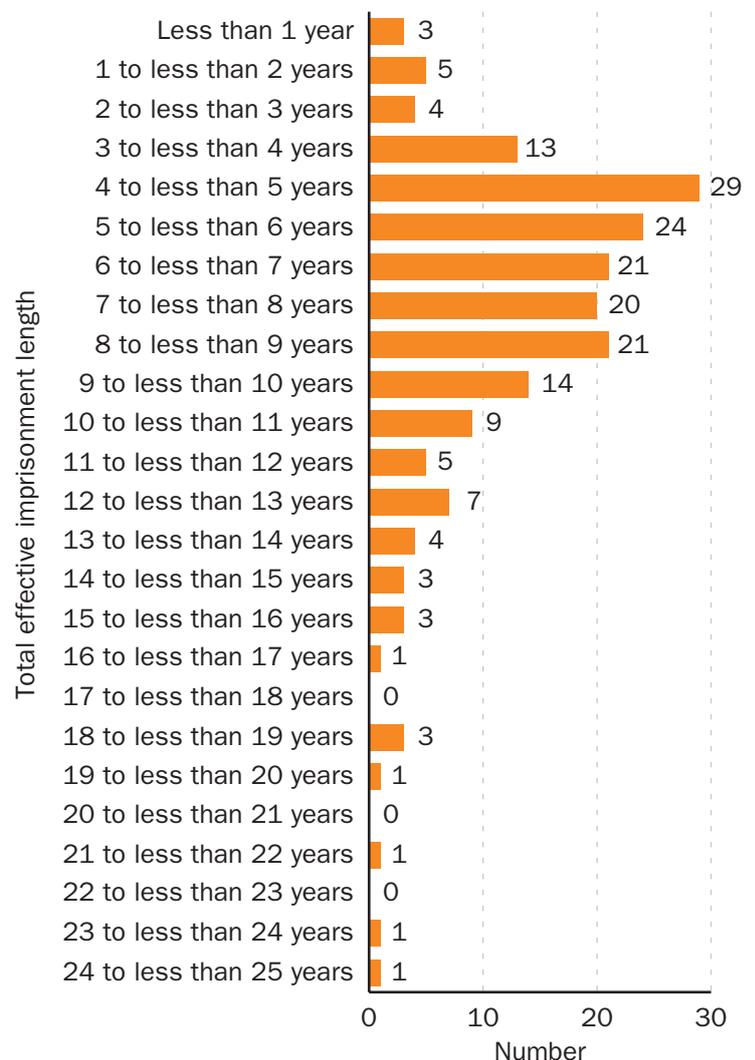
The most common total effective imprisonment term was 4 to less than 5 years (29 people).

Non-parole period

If a person is sentenced to a term of immediate imprisonment of less than 1 year, the court cannot impose a non-parole period. For terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For terms of imprisonment of 2 years or more, the court must impose a non-parole period in most circumstances. If the court fixes a non-parole period, the person must serve that period before becoming eligible for parole. If the court does not set a non-parole period, the person must serve the entirety of their imprisonment term in custody.

Of the 193 people who were sentenced to imprisonment for rape, 190 were eligible to have a non-parole period fixed.¹⁴ Of these, 178 were given a non-parole period (94%).¹⁵ Figure 7 shows the number of people sentenced to imprisonment for rape by length of non-parole period.

Figure 6: The number of people sentenced to imprisonment for rape, by length of total effective imprisonment term, 2013–14 to 2017–18



Non-parole periods ranged from 9 months to 17 years, while the median non-parole period was 4 years and 6 months (meaning that half of the non-parole periods were below 4 years and 6 months and half were above).

The most common non-parole period imposed was 3 to less than 4 years (36 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 compares the average length of total effective sentences of imprisonment with the average length of non-parole periods.

From 2013–14 to 2017–18, the average length of total effective sentences for all people ranged from 6 years and 1 month in 2016–17 to 8 years and 11 months in 2017–18. Over the same period, the average length of non-parole periods ranged from 4 years and 1 month in 2016–17 to 6 years and 1 month in 2017–18. The average total effective sentence length and non-parole period in 2017–18 represent the highest averages over the five years.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for rape is available on [SACStat](#). Data on the length of non-imprisonment sentence types, such as community correction orders, for rape is also available on [SACStat](#).

Summary

From 2013–14 to 2017–18, 216 people were sentenced for rape in the higher courts. Of these people, 193 (89%) were given a principal sentence of imprisonment.

People with a principal offence of rape were sometimes sentenced for other offences. The number and range of those offences help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 6 years and 6 months, while the median principal imprisonment length was 5 years.

Total effective imprisonment lengths ranged from 3 months (combined with a community correction order) to 24 years and 1 month, and non-parole periods (where imposed) ranged from 9 months to 17 years.

Endnotes

1. This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases in which the accused is found to be unfit to stand trial or not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.

Figure 7: The number of people sentenced to imprisonment for rape, by length of non-parole period, 2013–14 to 2017–18

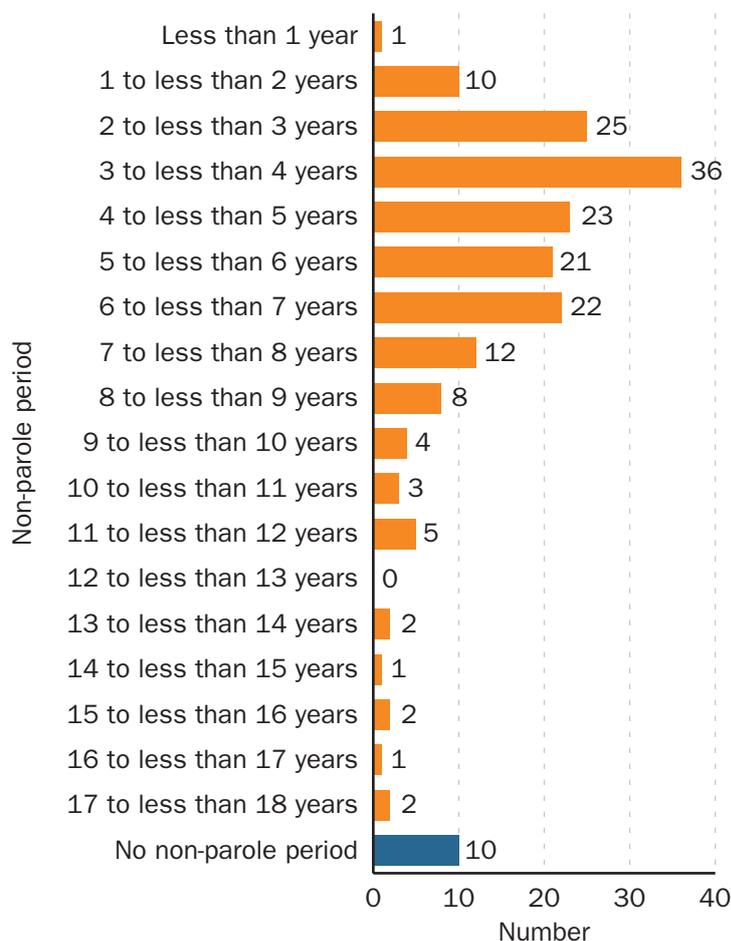
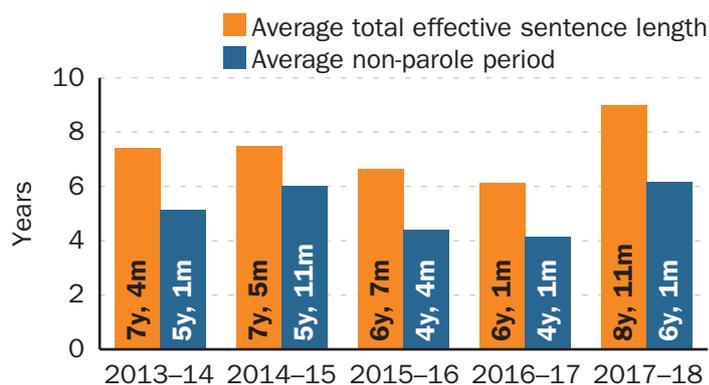


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for rape, 2013–14 to 2017–18



This Sentencing Snapshot is an update of Sentencing Snapshot no. 207, which describes sentencing trends for rape between 2011–12 and 2015–16.

2. Data on first-instance sentencing outcomes in this Snapshot was obtained from the Strategic Analysis and Review Team at Court Services Victoria. Data on appeal outcomes was collected by the Sentencing Advisory Council from the **Australasian Legal Information Institute**, and was also provided by the Victorian Court of Appeal. The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this report is accurate, the data is subject to revision.
3. In October 2017, the High Court delivered its judgment in *Director of Public Prosecutions v Dalgliesh (A Pseudonym)* [2017] HCA 41, in which it made two important findings about sentencing in Victoria. First, Victorian courts had been giving too much weight to *current sentencing practices*, which is just one of the factors courts are required to take into account when imposing a sentence. Second, where current sentencing practices are shown to be in error, the courts should change their practices immediately, not incrementally. Although the High Court's decision only occurred during the last financial year of this Snapshot, it may result in considerable changes to sentencing patterns for future editions of the Snapshots.
4. *Crimes Act 1958* (Vic) s 38.
5. The value of a penalty unit changes each year and can be found in the **Victorian Government Gazette** and on the **Victorian Legislation and Parliamentary Documents website**.
6. *Sentencing Act 1991* (Vic) s 5(2G) requires a custodial sentence (imprisonment or another form of custody) to be imposed for this offence when committed on or after 20 March 2017. The court is not allowed to impose an order of imprisonment combined with a community correction order or a non-custodial order such as a community correction order or a fine.
7. Under section 5(2)(ab) of the *Sentencing Act 1991* (Vic), a court must take into account the standard sentence when sentencing certain offences.
8. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
9. An *immediate custodial sentence* includes imprisonment, imprisonment combined with a community correction order, aggregate imprisonment combined with a community correction order, a residential treatment order, a partially suspended sentence and a youth justice centre order.
10. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
11. For example, initially the maximum term of imprisonment that could be combined with a community correction order was set at 3 months, but it was increased to 2 years in September 2014 and reduced to 1 year in March 2017.
12. Refer to Endnote 8.
13. Data presented in this section does not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Figures 3 and 4 only report on non-aggregate sentences of imprisonment for the principal offence of rape.
14. A total of 3 people were not eligible to have a non-parole period fixed because they were given a total effective sentence length of less than 1 year.
15. Five people were not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole periods that relate to these cases. The non-parole periods for these people are excluded from the analysis. A non-parole period was not set for 7 people who were eligible for a non-parole period.

SACStat – Higher Courts Rape

https://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_38_1.html

Authored by Hoa Nguyen, Data Analyst, Sentencing Advisory Council.
Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

© Copyright State of Victoria, Sentencing Advisory Council, 2019

ISSN 1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen Street, Melbourne.

Disclaimer:

The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots are accurate at the time of publishing.